
Remarks

In the Final Office Action mailed November 1, 2002, claims 1-57 are pending in the application. Claims 8-9, 35-36, 42, 44 and 48 are withdrawn from consideration. Claims 1-7, 10-34, 37-41, 43, 45-47 and 49-57 are rejected.

1. Rejection of Claims as Obvious Over Krzysik in View of Klofta

In the Final Office Action mailed November 1, 2002, the Examiner rejects claims 1-7, 10-13, 16-20, 40, 41, 43, 45-47, 49, 50 and 52-57 as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,149,934 issued to Krzysik et al. (hereinafter "the Krzysik patent") in view of U.S. Patent No. 6,238,682 issued to Klofta et al. (hereinafter "the Klofta patent"). Applicants maintain that a *prima facie* case of obviousness has not been established because, among other reasons, the Examiner has improperly cobbled individual elements of the two cited references together using the present application to perform hindsight reconstruction.

In the Final Office Action mailed November 1, 2002, the Examiner renews her grounds for rejection stated in the first Office Action mailed March 13, 2002. In addition, the Examiner responds to the remarks made in Applicants' Amendment submitted on June 26, 2002. In response to Applicants' argument that one of ordinary skill in the art would not have been motivated to combine the disclosures of the Krzysik, Klofta and Beerse [sic¹] patents, the Examiner believes the Krzysik patent discloses the use of lotion on a topsheet and the Klofta patent discloses a lotion that is to mitigate the potential for skin irritation. The Examiner also believes the Krzysik patent discloses to improve skin health and therefore, one of ordinary skill in the art would have motivation to combine the two patents. Further, with respect to Applicants' argument that it would be undesirable to use an antiviral/antibacterial composition to improve skin health, the Examiner believes it is well known in the art to use antibacterial materials on topsheets in contact with user's skin. The Examiner indicated that a subclass of art has been devoted to the use of antibacterial material on topsheets or in contact with a user's skin in diapers or other absorbent articles.

In addition to reiterating the arguments made in the Amendment submitted on June 26, 2002, Applicants offer the following additional remarks in response to the Examiner's final rejection of claims 1-7, 10-13, 16-20, 40, 41, 43, 45-47, 49, 50 and 52-57. Applicants continue to believe that there is no suggestion or motivation to combine the particular bits selected by the Examiner from the Klofta patent with the disclosure of the Krzysik patent. The motivation to modify the Krzysik patent must flow from

¹ Applicants are assuming that the Examiner intended to maintain the original rejection in view of the identified Krzysik and Klofta patents. The Examiner has not identified a "Beerse" patent in rejecting the pending claims.

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some teaching in the Klofta patent that suggests the desirability or incentive to make the modification needed to arrive at the invention claimed in the present application. Further, the requisite motivation must come from the Klofta patent, not Applicants' specification. Using Applicants' disclosure as a blueprint to reconstruct the claimed invention from isolated pieces of the Klofta patent contravenes the statutory mandate of section 103 of judging obviousness at the point in time when the invention was made.

The Examiner believes the Klofta patent discloses a lotion that is to mitigate the potential for skin irritation where the lotion includes a hydrophilic solvent, a high molecular weight polyethylene glycol, a fatty alcohol, a fatty acid and a botanical active. However, the Examiner does not indicate why one of ordinary skill in the art would apply the lotions of the Klofta patent to an absorbent article such as a diaper. Further, the Examiner picks and chooses from the hundreds of ingredients disclosed in the Klofta patent to arrive at the combination of hydrophilic solvent, high molecular weight polyethylene glycol, fatty alcohol, fatty acid and extracted botanical active claimed as part of the present invention. For example, the Klofta patent discloses that one of the key active ingredients of the lotion composition is one or more antimicrobials. (See Col. 11, lines 17-18). The Klofta patent also discloses the incorporation of hydrophilic solvents to aid in the solubilization of the antiviral organic acids (one of the classes of "antimicrobials" identified); the Examiner selected polyethylene glycols from numerous other solvents (Col. 17, lines 13-30) and high melting components (Col. 10, lines 6-18) identified. Similarly, fatty alcohol and fatty acid are selected from numerous "skin conditioning agents" disclosed in the Klofta patent. Further, the "natural essential oils" disclosed are selected from hundreds of "antimicrobial" ingredients. Disclosure in the Krzysik and Klofta patents of compositions that can be applied to the skin- by itself- is an insufficient basis for the requisite motivation necessary to arrive at the claimed invention. Without identification of additional bases of motivation to combine the disclosures of the Krzysik and Klofta patents, the Examiner is impermissibly using the Applicants' disclosure as a blueprint to reconstruct the claimed invention.

2. Rejection of Claims as Obvious Over Krzysik in View of Klofta and Further in View of Kropf

In the Final Office Action mailed November 1, 2002, the Examiner rejects claims 14, 15, 21-39 and 51 as being unpatentable under 35 U.S.C. §103(a) over the Krzysik patent in view of the Klofta patent and further in view of U.S. Patent No. 6,316,030 issued to Kropf et al. (hereinafter "the Kropf patent"). Applicants maintain that a *prima facie* case of obviousness has not been established because, among other reasons, the Examiner has improperly cobbled individual elements of the three cited references together using the present application to perform hindsight reconstruction.

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In the Final Office Action mailed November 1, 2002, the Examiner renews her grounds for rejection stated in the first Office Action mailed March 13, 2002. In addition, the Examiner responds to the remarks made in Applicants' Amendment submitted on June 26, 2002. In response to Applicants' argument that one of ordinary skill in the art would not have been motivated to combine the disclosures of the Krzysik, Klofta and Kropf patents, the Examiner believes the Kropf patent discloses pharmaceutical preparations that are compositions useful in skin care. The Examiner also believes the Krzysik and Klofta patents disclose a skin care composition. Therefore, the Examiner believes one of ordinary skill in the art, when modifying the skin care compositions of the Krzysik and Klofta patents, would look at other skin care compositions which would include pharmaceutical preparations. The Examiner believes that there would be motivation to combine the disclosure of the Kropf patent with the disclosures of the Krzysik and Klofta patents.

In addition to reiterating the arguments made in the Amendment submitted on June 26, 2002, Applicants offer the following additional remarks in response to the Examiner's final rejection of claims 14, 15, 21-39 and 51. Applicants continue to believe that there is no suggestion or motivation to combine the particular bits and pieces selected by the Examiner from the Klofta and Kropf patents with the disclosure of the Krzysik patent. The motivation to modify the Krzysik patent must flow from some teaching in the Kropf patent that suggests the desirability or incentive to make the modification needed to arrive at the invention claimed in the present application. Further, the requisite motivation must come from the Kropf patent, not Applicants' specification. Using Applicants' disclosure as a blueprint to reconstruct the claimed invention from isolated pieces of the Klofta and Kropf patents contravenes the statutory mandate of section 103 of judging obviousness at the point in time when the invention was made. While the Examiner believes the Kropf patent discloses pharmaceutical preparations that are useful for skin care, the Examiner has not indicated why one of ordinary skill in the art would be motivated to apply the sterols of the Kropf patent with the components selected from the Klofta patent for use on an absorbent article. Just because the compositions of the Kropf patent are capable of being applied to the skin, the requisite motivation/suggestion has not been established.

For at least these reasons, Applicants believe claims 1-7, 10-34, 37-41, 43, 45-47 and 49-57 are patentable over the cited references. In conclusion, and in view of the remarks set forth above, Applicants respectfully submit that the application and the claims are in condition for allowance and respectfully request favorable consideration and the timely allowance of the claims. If any additional information is required, the Examiner is invited to contact the undersigned at (920) 721-2433.

The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for

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above, such extension is requested and should also be charged to our Deposit Account. A duplicate of this sheet is provided.

Respectfully submitted,

DAVID J. TYRRELL ET AL.

By: Alyssa A. Dukowski

Alyssa A. Dukowski

Registration No.: 40,596